IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 502 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may beallowed to see the judgements? :

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No.

IQBAL S KOCHHER

Versus

PILOT ELECTRICALS

Appearance:

MR MJ TRIVEDI for Petitioner

MR YJ TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/06/2000

ORAL JUDGEMENT

Heard learned counsel for both the parties. This appeal arises from the order passed below application at Ex.5 in Regular Civil Suit No.2304 of 1993, wherein the application of the present respondent has been allowed and the ad-interim injunction granted earlier is made

absolute till the disposal of the suit. A statement is made at the Bar that in the Civil Suit pending in the City Civil Court, at Ahmedabad further proceedings are stayed by virtue of the order obtained by the present appellant on the ground of a suit on the same subject matter having been filed by them in the Delhi High Court.

[2] The learned counsel for the appellant has strenuously argued that the appellant was prior user of the trade mark "PILLOT" in respect of fans manufactured by them. It is submitted that the present defendant could at best be using the trade mark only after purchasing business from M/s.Raj Electricals who is claimed to have originally adopted the trade mark in respect of fans somewhere in the Year-1977. It is, therefore, submitted that the respondent could not have taken the plea of prior user in their favour and the nature of transaction between the respondent's predecessor-in-title and the respondent was not established before the trial court. It is further submitted that the appellant who was in the use of the said trade mark since at least 1981 ought not to have been injuncted from its use in the Year-1993 after 12 years of such use.

[3] The facts emerging from the pleadings and the impugned order placed on record are that the respondent was the dealer and the appellant was the manufacturer of fans. It is not clear whether the fans that the manufaturer was selling to the dealer bore the trade mark "PILLOT", but it is clear that the dealer who is the present respondent, has been selling the fans with that name. The learned Judge of the trial court has relied upon the material placed on record for coming to the prima facie conclusion that both the parties have applied for the registration of the same trade mark and, although, the appellant appears to have applied for the registration earlier in the year 1981, there was clear evidence of the user of the trade mark by the respondent since 1977. In view of the prima facie case having been established by the respondent, the application has been allowed.

[4] In this appeal time was granted upto 13-01-2000 for supply of paper book and upon failing to supply the same, it was dispensed with. Therefore, no material except the notice of motion at Ex.5 and the application for interim relief at Ex.6 alongwith the impugned order are on record for consideration. It is stated at the Bar that the application for interim injunction made in this appeal as also before the Hon'ble High Court, at Delhi by

the appellant have been rejected or the interim relief is refused.

[5] Under the circumstances as above, the only issue arising for consideration is whether the appellant succeeds in showing that the respondent had failed in establishing the prima facie case or whether any illegality or irregularity has crept in the impugned order. The trial court has considered the rival contentions and perused the documents placed on record. Those documents are not placed on record of this appeal. On appreciation of the material placed before the trial court, it has come to the conclusion that the respondent is in prior use of the trade mark in question. It was specifically asked to the learned advocate for the appellant, if there was any material to show that the appellant was in use of the trade mark prior to 1977. He has not been able to show any material to that effect. In these circumstances, the learned trial court was right in arriving at a conclusion that the respondent was using the trade mark since 1977 and, therefore, the prima facie case was made out by him for the grant of interim relief. No other specific reason has been pointed out to interfere with the impugned order as regards the user of the trade mark. Therefore, there is no substance in this appeal and it is required to be rejected. It is, however, clarified that the observation made in the impugned order by the trial court are for the purpose of reaching to the prima facie conclusion before the evidence could be led before the court. They shall not influence the final out come of the litigation between the parties. With this clarification, the appeal stands rejected, with no order as to costs.

Dt.20.06.2000. (D. H. Waghela,J.)

vrpanchal.